guilt and simultaneously to prevent proof of the true
of facts.

The alien community of some three million persons
have been effectively stripped of all Constitutional pr
tion if Congress can legislate against aliens by nam
specific identification merely because there is evidenc
support a "reasonable" legislative finding that the al
so singled out are undesirable.

For it is a lesson of history that whenever and where
there has been persecution and repression, there has alw
been "evidence" of the reasonableness of the repress
Persecution always develops a justifying ideology and j
ifying evidence. The Jews were persecuted on "eviden
of ritual murders and the Protocols of Zion, and the Na
had still more "evidence" that the Jews were dangers
the state. The slaveholders had "evidence" that the Ne
had to be enslaved for the good of society and for his o
good. Persecutions of the Catholics, Protestants, Quake
Mormons, Chinese, Socialists, and members of labor unio
have always been supported by "evidence."

It is simply not safe to permit legislative determinati
of individual guilt on the basis of "evidence." If expulsi
may be ordered on such a basis, the politically impote
alien is altogether at Congress' mercy. Whatever orga
zation an alien joins or has ever joined may sometime in t
future be singled out for persecution, and when it is,
may be sure that the legislature will be acting on "e
dence" which some lawyers will be able to describe
"reasonable."

If this legislation is sustained, then Congress has
power to expel resident aliens by name or by such grou
as Jews, Catholics, or members of trade unions. In 19
Attorney General Jackson denounced as obnoxious a l
to deport Harry Bridges. Sen. Rep. 2031, 76th Cong.,
Sess., p. 7. The Attorney General did not think it mater
to consider whether Congress had evidence from which
could reasonably conclude that Mr. Bridges was an un
sirable alien.

In 1948, Attorney General Clark, testifying on a bill which is an ancestor of the Internal Security Act, said:

> "A statute which would define the nature and purpose of an organization or group by legislative fiat is likely to run afoul of the due process requirements. The Congress cannot by statute presume a state of facts that is arbitrary or that attempts to prevent proof of true facts. This we call legislative fiat.
>
> * * * * *
>
> "The fact that legislation may be subject to objection as being discriminatory cannot be overlooked. By singling out a political party or group for prohibitive legislation you may be charged with discriminatory action which would be objectionable as special legislation.
>
> "In this connection also, the protection against the passage by the Congress of any Bill of Attainder (Art. 1, 9, 3) is a most important consideration." (Hearings before Legislative Subcommittee, House Committee on Un-American Activities, Feb. 5, 1948.)

The Attorney General did not say that such legislation as he described would be valid if Congress had evidence from which it could reasonably conclude that the Communist Party was a subversive organization.

This statute can be sustained only on the basis that the Constitution does not protect present or past members or affiliates of the Communist Party. Any such assumption is untenable, unworthy, and dangerous. If the Constitution can be eliminated today for one group, it will surely be eliminated tomorrow for another.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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Attorneys for Appellant

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In the Supreme Court of the United States

OCTOBER TERM, 1952

NO. 425

WILLIAM HEIKKILA, *Appellant*,

v.

BRUCE G. BARBER, etc., et al.,

On Appeal from the United States District Court for the Northern District of California

---

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS APPEAL

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 426

WILLIAM HEIKKILA, *Appellant*,

v.

BRUCE G. BARBER, etc., et al.,

On Appeal from the United States District Court for the Northern District of California

---

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS APPEAL

The appellee moves to dismiss the appeal in the above-entitled case on the ground that it presents no substantial question that was left undecided by this Court in its decision in *Harisiades* v. *Shaughnessy*, 342 U.S. 580.

STATEMENT

This cause comes before this Court on direct appeal because the complaint attacked the constitutionality of Section 22(2)(C) and Section 4 of the Internal Security Act of 1950, 64 Stat. 1006, 8 U.S.C. 137(2)(C) and 137-3 providing for the deportation of an alien who has been at any time after entry a member of the Communist Party of the United States.

A final order of deportation had been issued against appellant on January 11, 1952, based on a finding that he, an alien, had been a member of the Communist Party of the United States and its predecessor, the Workers Party, during the years 1929 to 1939. This finding was based on admissions under oath to such effect made by appellant at a prior deportation hearing held in 1949, which had been abandoned because it had not been conducted in accordance with the procedural requirements which this Court in *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, had held to be mandatory for such hearings at that period.

Appellant filed a complaint attacking the constitutionality of the statute under which the order was issued, and seeking to enjoin enforcement of the deportation order and to obtain review of the administrative action. Since the constitutionality of a statute of the United States was involved, a three-judge court was convened.

Appellee moved to dismiss the complaint on the ground that it failed to join an indispensable

party, the Commissioner of Immigration and Naturalization, and on the ground that the complaint failed to state a claim upon which relief could be granted.

On August 4, 1952, the three-judge court ordered that the action be dismissed.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED IN THE ABOVE APPEAL

1. Section 137 of the Internal Security Act of 1950, providing for the deportation of an alien who has been, after entry, a member of the Communist Party of the United States, is attacked as an *ex post facto* law, a bill of attainder and an infringement of the First and Fifth Amendments. In *Harisiades* v. *Shaughnessy*, 342 U.S. 580, this Court rejected similar contentions addressed to the constitutionality of Section 23(a) of the Alien Registration Act of 1940, 8 U.S.C. (1946 ed.) 137, providing for the deportation of an alien who had been a member of an organization advocating the violent overthrow of the Government, as applied to aliens found to have been members of the Communist Party before 1940, even though there was no finding in those cases that the aliens themselves advocated or knew that the Communist Party advocated such violent overthrow.

The only difference between the statute involved in the instant appeal and the statute involved in the *Harisiades* case is the fact that the present statute specifies membership in the Communist

Party as a basis for deportation, thus obviating the necessity of proving in each individual case that the Communist Party was at the time of the alien's membership an organization advocating the violent overthrow of the Government. Thus, the only question of constitutionality involved in the present case which was not decided by the *Harisiades* decision is whether this specification of membership in the Party as a basis for deportation is reasonable. Specifically, as applied in this case, the question is whether the statute is reasonable as applied to membership in the Party from 1929 to 1939. That period was involved in the *Harisiades* cases where the aliens did not contest the sufficiency of the Government's proof that the Party was at such time an organization advocating the violent overthrow of the Government. In the light of the facts about the Party before 1940 known to Congress when it passed the Alien Registration Act of 1940, referred to in the *Harisiades* opinion (342 U.S. at p. 590), in the light of the facts known to Congress when it passed the Internal Security Act of 1950, referred to in this Court's opinion in *Carlson* v. *Landon*, 342 U.S. 524, 535, and in the light of the numerous decisions which have held that, in the period before 1940, the Communist Party was a party advocating the violent overthrow of the Government,[1] the

[1] *United States* v. *Dennis*, 183 F. 2d 201 (C.A. 2), affirmed, 341 U.S. 494; *Skeffington* v. *Katzeff*, 277 Fed. 129 (C.A. 1); *Ex parte Vilarino*, 50 F. 2d 582 (C.A. 9); *In re Saderquist*, 11 F. Supp. 525 (D. Me.), affirmed, 83 F. 2d 890 (C.A. 1).

reasonableness of that congressional determination certainly does not present a substantial question.

Appellant's allegations in the complaint that the Communist Party did not advocate the violent overthrow of the Government in the period of his membership obviously do not take him out of the reach of the statute which specifically makes membership in the Party in and of itself a ground for deportation. Such allegations represent merely appellant's disagreement with the reasonableness of a congressional finding which, as noted above, has been too often upheld to be now open to attack as unreasonable. The question whether, even if the Communist Party did not advocate the violent overthrow of the Government, Congress could still reasonably find that it was an organization so inimical to our principles that alien members thereof should not be accorded the privilege of remaining in this country, is highly academic in the light of the facts which recent events have brought to light as to nature of the Communist Party in the years here involved. Under the *Harisiades* opinion, it is clear that the statute is constitutional if the party could reasonably be deemed an organization advocating the violent overthrow of the government, and it is also clear that the party could in fact reasonably be deemed such an organization.

2. The question of the reviewability of deportation orders by actions other than habeas corpus is not involved in this case. The appellee did not contest the jurisdiction of the three-judge court on such ground. He did move to dismiss on the ground that an indispensible party was not joined, but also on the ground that the complaint failed to allege grounds for relief. The judgment of the three-judge court merely dismissed the action. Since, as shown above, dismissal for failure to state a cause of action was clearly proper, there will be no occasion to consider the propriety of the form of action brought by appellant.

3. Appellant's claim that his testimony, given without any claim of privilege at the prior hearing which was abandoned because of procedural irregularities, was compulsory testimony obtained in violation of the Fifth Amendment is obviously without merit. On this reasoning any testimony voluntarily given by any witness at any trial would automatically be deemed compulsory if a new trial were granted or a judgment reversed on appeal. It is well established that a witness who gives testimony without claiming the privilege has waived the privilege, and his testimony may thereafter be used against him as any other testimony. *Smith v. United States*, 337 U.S. 137, 150; *United States v. Monia*, 317 U.S. 424, 427; *Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 113.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the appeal should be dismissed.

ROBERT L. STERN,
Acting Solicitor General.

OCTOBER 1952.